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March 26, 2020

*Via Email Only*  
*(rana@hollywoodchamber.net)*  
Rana Ghadban  
President & CEO  
Hollywood Chamber of Commerce  
6255 Sunset Blvd, Ste 150, Hollywood, Ca 90028

RE: *Proposed Article 4-72J-B to Chapter XX of the Los Angeles Municipal Code*  
*COVID-19 CITYWIDE WORKER RETENTION ORDINANCE*

Dear Rana:

As General Counsel to the Hollywood Chamber of Commerce, you requested that I evaluate the above referenced proposed Article which would require businesses in the City of Los Angeles to comply with citywide worker retention provisions applicable to an owners' change of ownership or control within 2 years of the COVID-19 Emergency Declaration. I believe the proposed Article will cause an undue burden on Employers based on the following:

1. Restriction on At-Will laws. The proposed Article will add a restriction on the current "At-Will" employment laws. At-Will employment means that the employee is free to leave their jobs at any time and employers are likewise free to fire the employee at any time for any lawful reason—or even no reason at all. *See, Labor Code, § 2922* ["An employment, having no specified term, may be terminated at the will of either party on notice to the other."] The At-Will law provides employer the flexibility to make decisions on its work force. This flexibility is especially important during these trying times as COVID-19 has already economically burdened employers. As employees are free to choose whether to work for an employer, employers should also keep their rights to choose who to employ. Employers should have the right to restructure its workforce to meet the challenges caused by COVID-19. Business owner's needs will inevitably change after this crisis and this would prohibit them from hiring workers that they need (until they offer jobs to everyone laid off).

2. Increased Litigation. The proposed Article will lead to increased litigation. The Article may be trap to employers who are not informed of the new law. There are an abundance of Plaintiffs' employee claims attorneys. These attorneys will likely use the Article to send demand letters seeking damages and attorneys' fees from employers; and filing a flood of lawsuits. As described below, the reinstatement rights, front and back pay damage award, benefits award, plus the attorney fee award

will be a huge incentive for the Plaintiffs' attorneys who work on contingency fee basis. Questions of fact will inevitably arise as to who is entitled to change of ownership and control, employment retention, rehire entitlement; is the same or similar position being filled; is the person qualified for the rehire; who is entitled to preference for each position; notices, record keeping, and damage awards. With the ambiguities inherent in new law there will be a lot of uncertainty which will lead to claims against employers who seek to comply with the new law. The cost of defending claims will be huge. Another uncertainty will be whether Employment Practices Liability Insurance (EPLI) will cover claims arising out of the new law. This may lead to uncertainty, increased insurance costs, and additional bad faith lawsuits.

3. May discourage Selling or Reorganizing Businesses. The increased burden the Article places on business owners may discourage or delay selling or change of control decisions by employers. In these trying times, business should have the freedom to make decisions based on economic needs. A sell or change of control may be necessary of a business to survive. Restrictions on transfers may discourage ownership and management changes. Before selling or changing control, the Article will force business owners to evaluate the procedures and requirements of the Article; and the inherent risks.

4. Lost Opportunity to Third Party Unemployed. Section 200.42 (A)(2) requires Successor Business Employers to rehire from the list for a period of 6 months. The rehire requirement will be unfair to unemployed (or underemployed) employees who would be eligible for open positions; but lose out due to the rehire requirements. Many Los Angeles residents (and others) lost their jobs due to COVID-19. It would be unfair to them if the new law requires employers to rehire employees less qualified than the unemployed worker.

5. Delay during 10 day waiting period. Section 200.42(B)(1) provides for a 10 day waiting period for responses to reinstatement offer letters. Such requirement will cause a delay in hiring; and add an administrative burden.

6. Unfair Sonority. Section 20.42(B)(2) requires Successor Business Employers to retain employees based on seniority; and not based on merit. This is an unfair restriction on the At-Will employment law; and may lead to work place inefficiency. It is also unfair to less senior employees.

7. 90 Day Retention Restriction. Section 200.42(B)(3) prohibits Successor Business Employers to terminate each worker rehired for 90 days; without cause. This is an unfair restriction on the At-Will employment law; will add a burden on Employer to justify terminations for cause; and will likely lead to litigation by terminated employees.

8. Performance Evaluations. Section 200.42(B)(4) requires Successor Business Owners to “*perform a written performance evaluation for each Worker retained pursuant to this Article.*” Such requirement will interference with business owners’ right to manage its employees; and will likely lead to litigation if the evaluations are not conducted; or insufficient.

9. Administrative burdens. Sections 200.42(A)(1), (3), (B)(1) & (C) include requirements for both Incumbent and Successor Business owners to create and maintain list, records, written offers, performance evaluations, and provide notices. These requirements will be an administrative burden and expense for employers; restrict their rights to manage their businesses; and likely lead to litigation for claims of noncompliance.

10. Retroactive. Section 200.41(J) defines workers as workers who worked on March 4, 2020. This may be unfair to employers who made decisions prior to the enactment of the Article. Said employers did not have the benefit of considering the effect of the Article at the time the employer made the decision to sell the business, transfer control, and/or lay off its employees.

11. Forced Rehire. Section 200.44(A) forced hiring and reinstatement rights is the most extreme burden on employers as the requirement restricts the employers’ right to manage its business. See the discussion on the restriction of the At-Will employment law above. In addition, if an employer already fills a position, then is required to reinstate a laid off employee (either due to a demand letter or litigation) the employer will have logistical problems of double filling a position.

12. Front or Back Pay and Benefits Damages. Section 200.44(A)(2) & Section 200.44(A)(3) provide for awards of front or back pay and value of benefits. Such remedies will be a question of fact and likely lead to protracted litigation.

13. Attorney’s Fees awards. Section 200.44(B) provides for attorney fees. As discussed above, such attorney’s fees award will incentivize Plaintiffs’ attorneys who work on contingency fee basis to pursue claims based on the new law.

14. Collective Bargaining Explicit Waiver. Section 200.44 requires express waivers in collective bargaining agreements. This requirement will, at minimum, cause legal and administrative costs for employers to amend their collective bargaining agreement. In addition, the requirement will be a trap for employers who do not know of the new law; or lay off employees prior to entering into the amendment to their collective bargaining agreement.

15. No Waiver. Section 200.46 provides that any request by an employee to waive rights will be a violation. Ordinance’s restriction on the ability to waiver of rights interferes with parties’ rights to bargain and contract. It is particularly problematic where (a) the employee voluntarily separates their

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employment in exchange for a severance/release and (b) where an employer is responding to an attorney demand letter and resolves a dispute prior to litigation.

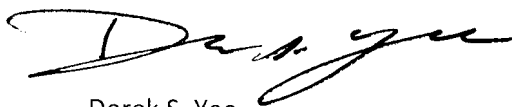
16. Two Year Effective date. First Paragraph provides that the Article will be apply to changes in ownership or control which occur within two years following the COVID-19 Emergency Declaration. The burden caused by these proposed new laws will therefore be in effect for at least almost two years.

17. Voluntary Separations. The Article does not exclude voluntary separations. Therefore employees who voluntarily resigned will be subject to the rehire requirements. The rehire requirement will be unfair to unemployed (or underemployed) employees who would be eligible for open positions; but loose out due to the rehire requirements.

18. Contractors Included. Section 200.41(J) definition of "Worker" includes a person "(3) who is employed or contracted to perform work functions directly by the incumbent Business Employer, or by a Person who has contracted with the Incumbent Business Employer to provide services at the Business subject to the Change in control." This is an overbroad definition which will cause Successor Businesses to not only be required to hire laid off employees from the Business it acquired, but also its subcontractors. In addition to the added burden, this broad definition will likely lead to unintentional oversite, misinterpretation and litigation.

I recommend that the Hollywood Chamber of Commerce oppose the Article; as it will cause extreme undue burden and expense to businesses in the City of Los Angeles. Please contact me if you wish to discuss.

Very truly yours,

A handwritten signature in black ink, appearing to read "Derek S. Yee", written in a cursive style.

Derek S. Yee